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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/834,682	04/13/2001	Robert Eugene Vogt	29566/KC15,412	4329
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			ART UNIT	PAPER NUMBER

3761

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/834,682

Applicant(s)

VOGT ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-14 and 21-24 is/are pending in the application.
- 4a) Of the above claim(s) 6,7,13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5,8-12 and 21-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 6-7 and 13-14 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made without traverse in Paper No. 4.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

Description

3. The disclosure is objected to because of the following informalities: 1) The Summary of the Invention Section, i.e. a description of the claimed invention, and the invention of the claims are not commensurate, see MPEP 608.01(d) and 1302.01, e.g. where is the strength of attachment in the first embodiment set forth? It is noted that the 3-15-04 amendment to page 4 still does not set forth a strength of attachment which is commensurate with that set forth in last sections of claims 8 and 22.

Appropriate correction is required.

Claims

4. It is noted that in the claims section filed 3-15-04 the parentheticals for claims 6-7 and 13-14 should have been --(withdrawn)--.

Claim Language Interpretation

5. Where Applicants have not specifically defined any claim language, the language will be given its common, i.e. dictionary, definition. It is noted, see, e.g., claim 8, lines 7-9, that the outer portion is not set forth as only being defined between the fastener receptive area on the front portion and the outer edge of the lateral section or extends from the area to the edge (It is noted that the specification as originally filed does not specifically disclose where the inner portion stops and the outer portion begins. However, it is disclosed that the fastener is attached to the inner portion and to the receptive area and the outer portion extends from the inner portion to the outer edge, so some part of the outer portion must be between the receptive area and the outer edge). The claims only require some portion of the outer portion be between the area and the edge. It is further noted that, e.g., see claim 8, lines 12-19 and similar language in claim 22, the claims only require sites which are 1) inward of and 2) adjacent to the side edges and 3) which are closest to the inner edge of the fastener to be 4) closer to the side edge than the inner edge ("adjacent" as defined by the dictionary is "Close to, lying near. Next to; adjoining"), i.e. sites which are not inward of and adjacent to the side edges are not required to be closer to the side edge. It is also noted that "adjacent" is also a relative term absent claiming of a specific distance. It is noted that the claims do not require the outer portion to be attached to the front portion only by "the at least one attachment site" having requirements 1)-4) supra. It is finally

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noted that a “fastener receptive area” and “a releasable fastener” as claimed in claims 8 and 22 and releasable fastening to the front portion as claimed in claim 22 do not require the capability of refastening after release. Now claim 8 also requires the strength of attachment being sufficiently weak such that the sites can be separated from the front portion to adjust the releasable fastener, i.e. the fastener has the capability of adjustment. “Adjust” as defined by the dictionary is “To change so as to match or fit; cause to correspond. To bring into proper relationship”. “Fracturing” is defined in the amendment to page 12, line 9, lines 1-4 thereof and therefore “without substantially fracturing” is defined as without fracturing taking into account any manufacturing tolerances. With regard to claim 24, see discussion *infra*, due to the lack of clarity, the claim will be considered to require lateral sections being free from attachment to the front portion between the releasable fastening at the inner portion and the said at least one attachment site.

Claim Objections

6. Claims 22-24 are objected to because of the following informalities: in claim 22, lines 26 et seq, this phrase appears to be missing a word or words or the current words need to be rearranged, i.e. “being...further” should be --attached at each lateral portion further being--? Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. Claims 22-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 22, is the portion of the front portion releasably fastened to the releasable fastener on lines 8-9 and the fastener receptive area on line 3 one and the same, i.e. how many fastener receptive portions at a minimum are required? In regard to claim 24, how can the outer portion be attached to portions adjacent respective side edges as set forth in claim 22 yet the lateral sections not be attached there as now set forth on lines 2 et seq of claim 24? Therefore, claim 24 is inconsistent with claim 22.

8. Claims 22-24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Where is the support for the claim language of claim 22, lines 16-18 and last five lines and the last four lines of claim 24? It is noted with regard to claim 24, "attachment" as set forth includes both direct and indirect attachment, i.e. where is it disclosed the lateral sections are free from indirect attachment to the front portion? If Applicants traverse this rejection the specific portions of the specification relied upon which are of the same scope as the claim language should be set forth. See also discussion of Applicant's remarks supra.

Claim Rejections - 35 USC § 102

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 1, 3-5, 8-12 and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Romare '484.

Claims 8, 3-5, 10-12: See Claim Language Interpretation section supra, and abstract, Figures, especially Figures 2-3, col. 1, line 57-col. 2, line 22, col. 2, lines 40-63, col. 3, line 21-col. 4, line 21, col. 4, lines 26-66 and col. 5, lines 6-53, i.e. Romare discloses a personal care article having a longitudinal axis and comprising a front portion, 6 or 106; a back portion, 7 or 107; a crotch portion, 8 or 108; fastener receptive area, 17 or the area beneath releasable fastening points adjacent 115 and 116 or both; lateral sections 113, 114, see col. 3, lines 40-42, 46-47 and 61-65; which have inner portions, adjacent 115 and 116; outer portions; at least portions of 113 and 114 adjacent 110 (Note the dashed lines in Figure 3 denoting the edge of the absorbent 103 and side edges of 106 and see element 17 in Figure 2 with regard to the dashed line denoting the absorbent 3 and the solid lines denoting the side edges of 6); outer edges, 113 and 114 adjacent side edges of back portion; releasable fasteners, i.e. 115, 116 alone or in combination with releasable fastening points adjacent 115 and 116; having an inner edge and releaseably fastened to the front portion or fastener receptive portion closer to the longitudinal axis than to the outer edge, see Figure 3; the outer portion of the lateral sections attached at at least one attachment site to the front portion inwardly of but adjacent the side edges, i.e. at least the points 110 closest to or next to the side edges of front portion 6; and one or more of such sites which are closest to the inner edge of the releasable fastener, i.e. at least the points 110

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closest to or next to the side edges, closer to the side edge than to the inner edge, see Figure 3.

With regard to last 5 lines of claim 8, see, e.g., col. 2, lines 7-12, col. 4, lines 4-21, col. 5, lines 14-31, see again Figure 1 and Figure 2 and note col. 2, lines 28-31, i.e. Figure 2 shows the diaper of Figure 1 in the opened state, shows no fracturing of front portion, i.e. attachment sites can be separated from the front portion and the releasable fastener released and then caused to correspond again or be brought into proper position again to refasten, i.e. adjust, the releasable fastener without fracturing. Therefore, while the Romare patent is believed to explicitly set forth the strength of attachments, even if not, the structure of the fastenings of Romare is the same as that claimed. Therefore there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure are also inherent in the same structure of Romare, see MPEP 2112.01.

Claims 1 and 9: see Figure 3 and col. 3, lines 58-65.

Claim 21: see Figures and, e.g., col. 3, line 58-col. 4, line 21, and col. 5, lines 14-25.

Claims 22-23: see discussion of claims 1, 3-5, 8-12 and 21 supra. Additionally with regard to lines 16-18 and 24 et seq, i.e. these lines set forth the functions, capabilities and properties of the lateral sections and attachment site structure. See also cited portions of Romare supra, especially col. 2, lines 12-13, col. 3, lines 34-36, col. 5, lines 6-7. Therefore, at the very least, the structure of the sections and sites of Romare as configured is the same as that claimed. Therefore there is sufficient factual basis for one to conclude that the capabilities and functions of such claimed structure are also inherent in the same structure of Romare, see MPEP 2112.01.

Claim 24: As best understood, see discussion of claims supra and Figure 3, the spaces adjacent the ends of the lines from 113 and 114 are free from direct attachment and such spaces

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are between the releasable fastening at the inner portion and the at least one attachment site, i.e. the areas between the two dashed lines at the ends of the lines from 110 in Figure 3.

Attention is also invited to the response to arguments section infra.

Response to Arguments

11. Applicants remarks with regard to the matters of form have been noted but are either deemed moot in that they have not been reraised or are deemed nonpersuasive for the reasons set forth supra. With regard to Applicants remarks on page 9, second full paragraph, such remarks have been considered but are deemed not persuasive because Figure 1 and page 16, lines 8-9 do not teach the language of claim 22 at issue. Page 13, lines 9-34 and the preliminary amendment at pages 3-4 also do not teach the language of claim 22 at issue. Where in such portions of the specification does it teach lateral sections “configured to be stretchable relative to the fastener receptive area with the releasable fastener fastened in the...area” or “attachment sites when intact”, i.e. when intact includes anytime including when worn as a pant, “configured to stabilize the first and second lateral sections relative to said longitudinal axis to prevent said front portion from folding over on itself” or “sites...configured to stretch away from and toward said longitudinal axis”? Furthermore, how can the intact sites stabilize the lateral sections relative to the axis yet stretch toward and away from the same axis, i.e. not “stable” which is defined as “resistant to sudden change of position or condition”. It is further noted that what structure is taught at the portions of the specification and claimed in the claims, i.e. elasticized lateral portions, releasable adhesive or weld attachment sites, and a releasable fastener, is also taught by Romare and thereby, even if the claim language at issue were deemed to be supported by the

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specification as originally filed, that Romare, at the very least, inherently includes such capabilities, functions and properties, see prior art rejection supra, contrary to Applicants remarks on pages 10-11 with regard to claim 22. With regard to claim 24, the claim is not limited to the lack of direct attachment only, i.e. includes the lack of indirect attachment also. Page 9, lines 24-27 does not support the lateral sections not being indirectly attached to the front portion. Applicant's remaining remarks with regard to Romare have been considered but are deemed narrower than the teachings of the prior art with regard to the strength of attachment, note again the prior art rejection supra, e.g. the front portion of the Romare device in the opened state shows explicitly no fracturing.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any new grounds of rejection were necessitated by the amendments to claims 8, 22 and 24.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
May 18, 2004